

Options for Closing the Gap on Forestry Management Measures

January 2015

Background/Context

Additional progress is needed in Oregon on the additional management measures for forestry that are necessary to achieve and maintain water quality standards and designated uses. The following describes how Oregon may choose to proceed to adopt additional protective forestry measures to satisfy the CZARA additional management measures for forestry.

General CZARA Guidelines for Approval

There are two pathways for states to achieve an approvable program: 1) *regulatory program*; **OR** 2) *voluntary approach*. A voluntary approach requires that the State provide the following:

- a description of the voluntary programs, including the methods for tracking and evaluating those programs Oregon will use to encourage implementation of the management measures;
- a legal opinion from the attorney general or an attorney representing the agency with jurisdiction for enforcement that such authorities can be used to prevent nonpoint pollution and require management measure implementation, as necessary; and
- a description of the mechanism or process that links the implementing agency with the enforcement agency and a commitment to use the existing authorities where necessary, notwithstanding the statutory “BMP safe harbor” provision in the Forest Practices Act.

Reasonable Options for Oregon to Satisfy the CZARA Additional Management Measures for Forestry

• **Riparian Buffers**

- **Medium and Small-Fish Bearing Streams:** State currently pursuing regulatory program
 - Current Deficiencies/Shortfall: Inadequate riparian protections for small and medium fish-bearing streams. They do not ensure forest operations meet the State water quality standards for protecting cold water in small and medium fish bearing streams.
 - Examples of State Actions Needed: 1) **Complete riparian rule by end of 2015;** 2) Rule should cover medium and small-fish bearing streams; and 3) Rule should provide protective no cut buffers

- **Small, Non-fish bearing streams: State is not currently pursuing a regulatory program; voluntary approach would need to address the following:**
 - Current Deficiencies/Shortfall: No riparian protections for small, non-fish bearing streams in the Coast Range. This does not ensure forest operations meet the State water quality standards for protecting cold water criterion.
 - Examples of State Actions Needed: 1) [By date certain] the State should identify adequate no cut buffer with a wider riparian management zone. 2) [By date certain], the State will identify and provide to NOAA and EPA, the ODF and DEQ general authorities it will rely on to enforce changes when voluntary measures are not implemented. 3) [By date certain], the State should meet other elements needed for voluntary program (see General CZARA Guidelines for Approval above or NOAA and EPA's 2001 memo on Enforceable Policies and Mechanisms for State Coastal Nonpoint Source Programs (<http://coast.noaa.gov/czm/pollutioncontrol/media/epmmemo.pdf>))
- **Roads: Regulatory and/or voluntary approaches would need to address the following**
 - Current Deficiencies/Shortfall:
 - *Regulatory* - Recent rule changes and new policies do not sufficiently address water quality impairments associated with legacy” roads, (e.g., roads that do not meet current State requirements with respect to siting, construction, maintenance and road drainage,), or impairments associated with the portion of the existing network where construction or reconstruction is not proposed.
 - *Voluntary* – ODF voluntary program does not adequately address legacy roads, nor has the state satisfied all elements needed for a voluntary program (see above).
 - Examples of State Actions Needed:
 - *Regulatory* – [By date certain], the State should establish regulations and or policies that specifically address legacy roads (e.g., roads that do not meet current State requirements with respect to siting, construction, maintenance and road drainage,) or impairments associated with the portion of the existing network where construction or reconstruction is not proposed.
 - *Voluntary* – [By date certain], 1) the State should establish a road survey or inventory program that considers both active, inactive, and legacy roads that have the potential to deliver sediment to streams; 2) Develop ranking system to establish priorities for road repair or decommissioning; 3) Develop a timeline for addressing priority road issues including retiring or restoring forest roads that impair water quality; 4) Develop a reporting and

tracking component to assess progress for remediating identified forest road problems.

For an effective voluntary approach, all are needed as a package. The state must also meet other elements needed for voluntary program (see General CZARA Guidelines for Approval above or NOAA and EPA's 2001 memo on Enforceable Policies and Mechanisms for State Coastal Nonpoint Source Programs (<http://coast.noaa.gov/czm/pollutioncontrol/media/epmmemo.pdf>)).

- **Landslides: Regulatory and/or voluntary approach would need to address the following:**
 - Current Deficiencies/Shortfall:
 - *Regulatory* - Oregon does not have additional management measures for forestry in place to protect high-risk landslide areas to ensure water quality standards and designated uses are protected. Oregon's rules protect for public safety against shallow, rapidly moving landslides.
 - *Voluntary* – The voluntary measure identified by the State gives landowners credit for leaving standing live trees in landslide prone slopes as an eventual source of large wood for fish-bearing streams. The State hasn't shown how it monitors and tracks the implementation and effectiveness of this measure.
 - Examples of State Actions Needed:
 - *Regulatory* – [By date certain], the State should adopt similar harvest and road construction restrictions for all high-risk landslide prone areas with the potential to impact water quality and designated uses, not just those where landslides pose risks to life and property.
 - *Voluntary* – [By date certain], the State should 1) Establish program that includes a scientifically rigorous process for identifying high-risk areas and unstable slopes based on field review by trained staff. Widely available maps of high-risk landslide areas could improve water quality by informing foresters during harvest planning; 2) Integrate processes to identify high-risk landslide prone areas and specific best management practices to protect these areas into the TMDL development process; 3) Adopt BMPs that include employing no-harvest restrictions around high-risk areas and ensuring that roads are designed, constructed, and maintained in such a manner that the risk of triggering slope failures is minimized;

For all voluntary programs, the state must meet all elements needed for voluntary program (see General CZARA Guidelines for Approval above or NOAA and EPA's 2001 memo on Enforceable Policies and

Mechanisms for State Coastal Nonpoint Source Programs
(<http://coast.noaa.gov/czm/pollutioncontrol/media/epmmemo.pdf>)

- **Spray Buffers for Aerial Application of Herbicides on Non-Fish Bearing Streams: regulatory and/or voluntary approaches that could be established**
 - Current Deficiencies/Deficiencies:
 - *Regulatory* - Oregon does not have a spray buffer to protect small, non-fish bearing streams when herbicides are aerially applied.
 - *Voluntary* – There are no voluntary spray buffers nor is there monitoring and tracking on small, non-fish bearing streams
 - Examples of State Actions Needed: Riparian buffer protections for non-fish bearing streams may suffice as a protective herbicide spray buffers if riparian buffer protections extend the length of the non-fish bearing stream where spraying occurs; or
 - *Regulatory* – [By date certain], the State should adopt rules for aerial herbicide spray buffers for small, non-fish bearing streams.
 - *Voluntary* – [By date certain], the State should 1) develop guidelines for buffer protections for aerially applied herbicides on small, non-fish bearing streams; 2) Monitor and track voluntary measures; 3) Identify ODF and DEQ general authorities for enforcing changes when voluntary measures are not implemented; 4) Revise ODF Notification of Operation form to explicitly include that aerial applicators will adhere to FIFRA labels, especially for herbicides that are prohibited from spraying in/above waterbodies, for all stream types, including non-fish bearing streams.

For all voluntary programs, the state must meet all elements needed for voluntary program (see General CZARA Guidelines for Approval above or NOAA and EPA's 2001 memo on Enforceable Policies and Mechanisms for State Coastal Nonpoint Source Programs
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General CZARA Guidelines for Approval

There are two pathways for states to achieve an approvable program: 1) *regulatory program*; **OR** 2) *voluntary approach*. A voluntary approach requires that the State provide the following:

- a description of the voluntary programs, including the methods for tracking and evaluating those programs Oregon will use to encourage implementation of the management measures;
- a legal opinion from the attorney general or an attorney representing the agency with jurisdiction for enforcement that such authorities can be used to prevent nonpoint pollution and require management measure implementation, as necessary; and
- a description of the mechanism or process that links the implementing agency with the enforcement agency and a commitment to use the existing authorities where necessary, notwithstanding the statutory “BMP safe harbor” provision in the Forest Practices Act.

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• **Riparian Buffers**

- **Medium and Small-Fish Bearing Streams: State currently pursuing regulatory program**
 - Current Deficiencies/Shortfall: Inadequate riparian protections for small and medium fish-bearing streams. They do not ensure forest operations meet the State water quality standards for protecting cold water in small and medium fish bearing streams.
 - Examples of State Actions Needed: 1) **Complete riparian rule by end of 2015;** 2) Rule should cover medium and small-fish bearing streams; and 3) Rule should provide protective no cut buffers

- **Small, Non-fish bearing streams: State is not currently pursuing a regulatory program; voluntary approach would need to address the following:**
 - Current Deficiencies/Shortfall: No riparian protections for small, non-fish bearing streams in the Coast Range. This does not ensure forest operations meet the State water quality standards for protecting cold water criterion.
 - Examples of State Actions Needed: 1) ~~[By date certain]~~**By end of 2015**, the State should identify adequate no cut buffer with a wider riparian management zone equivalent to WA's or CA's program. 2) ~~[By date certain]~~**By the end of 2015**, the State will identify and provide to NOAA and EPA, the ODF and DEQ general authorities it will rely on to enforce changes when voluntary measures are not implemented. 3) ~~[By date certain]~~**By end of 2015**, the State should meet other elements needed for voluntary program (see General CZARA Guidelines for Approval above or NOAA and EPA's 2001 memo on Enforceable Policies and Mechanisms for State Coastal Nonpoint Source Programs (<http://coast.noaa.gov/czm/pollutioncontrol/media/epmmemo.pdf>))
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 - *Voluntary* – ODF voluntary program does not adequately address legacy roads, nor has the state satisfied all elements needed for a voluntary program (see above).
 - Examples of State Actions Needed:
 - *Regulatory* – ~~[By date certain]~~**By the end of 2015**, the State should establish regulations and or policies that specifically address legacy roads (e.g., roads that do not meet current State requirements with respect to siting, construction, maintenance and road drainage,) or impairments associated with the portion of the existing network where construction or reconstruction is not proposed.
 - *Voluntary* – ~~[By date certain]~~**By the end of 2015**, 1) the State should establish a road survey or inventory program that considers both active, inactive, and legacy roads that have the potential to deliver sediment to streams. ~~Examples could include those similar to WA's and ID's;~~ 2) Develop ranking system to establish priorities for road repair or

decommissioning; 3) Develop a timeline for addressing priority road issues including retiring or restoring forest roads that impair water quality; 4) Develop a reporting and tracking component to assess progress for remediating identified forest road problems.

For an effective voluntary approach, all are needed as a package. The state must also meet other elements needed for voluntary program (see General CZARA Guidelines for Approval above or NOAA and EPA's 2001 memo on Enforceable Policies and Mechanisms for State Coastal Nonpoint Source Programs (<http://coast.noaa.gov/czm/pollutioncontrol/media/epmmemo.pdf>)).

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 - *Regulatory* – [By date certain] ~~By end of 2015~~, the State should adopt similar harvest and road construction restrictions for all high-risk landslide prone areas with the potential to impact water quality and designated uses, not just those where landslides pose risks to life and property.
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○ Examples of State Actions Needed: Riparian buffer protections for non-fish bearing streams may suffice as a protective herbicide spray buffers if riparian buffer protections extend the length of the non-fish bearing stream where spraying occurs; or

- *Regulatory* – [By date certain]~~By end of 2015~~, the State should adopt rules for aerial herbicide spray buffers for small, non-fish bearing streams.
- *Voluntary* – [By date certain]~~By end of 2015~~, the State should 1) develop guidelines for buffer protections for aerially applied herbicides on small, non-fish bearing streams; 2) Monitor and track voluntary measures; 3) Identify ODF and DEQ general authorities for enforcing changes when voluntary measures are not implemented; 4) Revise ODF Notification of Operation form to explicitly include that aerial applicators will adhere to FIFRA labels, especially for herbicides that are prohibited from spraying in/above waterbodies, for all stream types, including non-fish bearing streams.

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